section 6 of the Evidence Act, as statements forming part of the *res gestae*.

For the foregoing reasons, I was satisfied that the statements were properly admitted.

Solicitors: *Darshan Singh & Co.; Rajasingam & Co.*

PUBLIC PROSECUTOR v. PENGURUS HONG TRADING & CO.

[R. Cr. J. (Eusoff Chin J.) March 17 & 18; April 4, 1984]

[Kuala Trengganu – Criminal Revision No. 1 of 1984]

Criminal Law and Procedure – Charge of an offence in contravention of s.11(1)(c) of the Sale of Food and Drugs Ordinance 1952 – Question of whether tea should contain no colouring matter whatsoever – Sale of Food and Drugs Ordinance, 1952, s.11(1)(c).

Interpretation – Ejusdem generis rule – Object of legislation – Sale of Food and Drugs Regulations, 1952, reg. 3(v)(ii).

In this case, the accused was charged as follows:- "That you on the 18th day of 1983 at about 11.00 at No. B-4, Tanah Lot, in the district of Marang in Trengganu, as a tea manufacturer did sell to one health Inspector Nik Mohd. bin Nik Abu Bakar 3 packets of tea known as 'sawi' brand which upon analysis were found containing Tetrazine and Ponceou 4R as facing matter and that you have thereby committed an offence under section 11(1)(c) of the Sale of Food and Drugs Ordinance 1952 and punishable under Section 11(4) of the same Ordinance".

At the trial, the manager of the defendant company in his defence said that the facing matters used by his company were those specifically allowed by law. On account of this defence, the Magsitrate acquitted and discharged the defendant.

The main issue in this case turned upon the interpretation of the words "or other matter for facing" found in regulation 3(v)(ii) of the Sale of Food and Drugs Regulations, 1952: "It shall not contain any spurious or exhausted or decayed or mouldy leaves or stalks or any Prussian blue or lead or any compounds of lead or other matter for facing or for any other purpose".

It was contended by the learned Deputy Public Prosecutor that the words "other matter" should be interpreted to mean that tea should not contain any facing matter whatsoever.

Held: (1) applying the *ejusdem generis* rule, the words "other matter" appearing in regulation 3 (v) (ii) of the Sale of Food and Drugs Regulations, 1952 should be restricted to any matter which is either harmful or deleterious to the human body. Regulation 18 Schedule A of the Regulations specifically allowed Tetrazine and Ponceou 4R to be used in tea as facing matter and accordingly, the defendant had not committed an offence;

(2) the law does not intend that no colouring matter whatsoever should be added to tea. If it is the intention of the law that tea should not contain any colouring matter, it should say so clearly;

(3) the order of the Magistrate that the defendant be acquitted and discharged should be confirmed.

Case referred to:-

(1) *In re Clark* [1898] 2 Q.B. 330.

CRIMINAL REVISION.

Mohamed Azman bin Hood (Deputy Public Prosecutor) for the Public Prosecutor.

Defendant in person.

Cur. Adv. Vult.

Eusoff Chin J.: The accused was charged under Section 11(1)(c) of the *Sale of Food and Drugs Ordinance* 1952 as follows –

"Bahawa kamu pada 18.5.1983, lebihkurang pukul 11.00 pagi, di kedai runcit Mustafa bin Embong, No. B-4, Tanah Lot, dalam daerah Marang, dalam negeri Terengganu, kamu sebagai pengilang, ada menjual kepada Inspektor Kesihatan Nik Mohd. bin Nik Abu Bakar, 3 bungkus Serbok Teh Cap Sawi yang selepas dianalisa didapati dibubuh bahan pewarna Tartrazine dan Ponceou 4R. Oleh yang demikian, kamu telah melakukan kesalahan di bawah seksyen 11(1)c Ordinan Jualan Makanan dan Dadah 1952 dan boleh dihukum di bawah seksyen 11(4) di bawah Ordinan yang sama."

It is the case for the prosecution that on May 8, 1980 at about 11.00 a.m. PW1 who was a health inspector of the Health Office Marang went to shop No. B-4 Tanah Lot, Marang. He bought three packets of tea – Teh Cap Sawi. From the tea packets, PW1 found that the manufacturer of the tea was Hong Trading & Co., the defendant. PW1 sent a sample of the tea to the Chemistry Department, K. Terengganu for analysis. The chemist report said that the tea contained Tetrazine and Ponceou 4R, as facing matters. The manager of the defendant company in his defence said that the facing matters used by his company are those specially allowed by law. The Magistrate acquitted and discharged the defendant.

In his argument before me the learned Deputy Public Prosecutor said that under regulation 3(v) of the Sale of Food and Drugs Regulations, 1952, (hereinafter referred to as the Regulations) tea should not contain "any Prussian blue, lead or any

compounds of lead, or other matter for facing." He said that Prussian blue, lead or lead compounds are poisonous and deleterious to the human body. However he contended that the words "other matter" should be interpreted to mean "any matter whatsoever". With respect, I disagree with that contention.

The Regulations are divided into different Parts. Part I deals with "Definitions and Standards". Regulations 2 and 3 are under Part I of the Regulations. Regulation 2 states –

"2. Except where it is otherwise expressly provided or where it is repugnant to the context, the definitions and standards in this Part shall apply throughout these Regulations.

Regulation 3 of the Regulations states –

"3. The following shall be the definitions of and the standards of strength, weight, quality or quantity, as the case may be, of the foods and drugs specified in this Regulation or of any ingredients or component parts thereof –

(v) TEA –

(i) Tea shall be the leaves and leaf-buds of various species of Tea, prepared by the usual trade processes.

(ii) Tea shall yield not more than seven parts per centum nor less than four parts per centum of ash, of which at least one-half shall be soluble in water. It shall yield at least thirty parts per centum of water-extract. It shall not contain spurious, or exhausted, or decayed, or mouldy leaves or stalks, or any Prussian blue, or lead, or any compounds of lead or other matter for facing or for any other purpose."

My view is that when reading regulation 3(v)(ii), one should not overlook what regulation 2 has specially provided. It is necessary therefore, to look through the whole regulations, and if one does so, he would find that Part III of the Regulations deals with "Preservatives and Colouring Matters". Regulation 18 which comes under Part III, states –

"18. No person shall manufacture import for sale or sell any article of food which contains any added colouring matter other than those specified in schedule A to these Regulations."

Regulation 18, therefore, is a regulation which expressly provides that colouring matters which are listed in Schedule A are allowed to be added to any article of food. 'Tea' is food within the definition of 'food' under Section 2 of the Sales of Food and Drugs Ordinance 1952. Among the colouring matters allowed under Schedule A, are found "Tetrazine" and 'Ponceou 4R', which the prosecution contended should not be added to tea. The learned Deputy Public Prosecutor submitted that it is the intention of the law that tea should not contain any colouring matter whatsoever. Again with respect, I disagree with that argument.

If it is the intention of the law that tea should not contain any colouring matter, it should say so clearly, such as for example under the definition of 'vinegar' which is to be found under regulation 3(w)(iii), where it clearly says, "It shall not contain any foreign substance or colouring matter except caramel".

I am further of the view that the words 'other matter' found in regulation 3(v)(ii) of the regulation should be read *ejusdem generis* with "Prussian blue, lead or compounds of lead" which according to the Deputy Public Prosecutor are poisonous or deleterious to the human body. According to a well established rule of construction of statutes, general terms following particular ones apply only to such persons or things as are *ejusdem generis* with those comprehended in the language of the legislature. In other words the general expression is to be read as comprehending things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended.

In *re Clark*[1], the Court of Appeal had to interpret the words "or otherwise" found in section 3 of the Married Women's Property Act, 1882 which stated –

"3. Any money or other estate of the wife lent or entrusted by her to her busband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of her hubsand's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money for money's worth have been satisfied.

It was submitted to the Court that the words "or otherwise" enlarged the preceding words "for the purpose of any trade, or business carried on by him", and the true construction of the section was that where money was lent or entrusted by a wife to her husband for any purpose the wife could not prove in competition with the other creditors of the husband. The Court of Appeal rejected that argument and held that the section did not apply to a loan by a wife to her husband for purposes unconnected with his trade or business. Vaughan Williams L.J. in that case said –

"The construction which we are to-day placing upon this section is, in my opinion a construction which we ought to arrive at by applying the ordinary canons of construction. The rule that, where there are general words following particular and specific words all of one genus, the general words are presumed to be restricted to the same genus as the particular words, is a familiar rule of construction. In my judgment, that familiar rule is based upon a principle which applies to the section now before us. In this section there is a specific proposition followed by the general words "or otherwise". Now it seems to me that, just as where there are general words following particular words, the general words are presumed to be restricted to the same genus as the particular words; so where there is a specific proposition followed by general words, the general words ought to be presumed, unless there are some words which lead to a contrary conclusion, to be restricted to the matter that is covered by the specific proposition. The fact is that general words in a section of this sort can hardly avoid being ancillary in their nature. When one looks at a clause like this it is quite plain that the words "or otherwise" are ancillary to the specific proposition which precedes them, and it seems to me that where there are ancillary words of that sort it is a sound and wholesome rule not to give such a construction to the ancillary words as will wipe out or do away with the specific proposition with which the clause commences."

I think the most reasonable construction to be given to regulation 3(v)(ii) is that the law does not intend that no colouring matter whatsoever should be added to tea. I would construe that the words "other matter" appearing in regulation 3(v)(ii) should be restricted to any matter which is either harmful or deleterious to the human body. I therefore, confirm the order of the Magistrate that the defendant be acquitted and discharged.

Order accordingly.

PUBLIC PROSECUTOR v. NEOH WAN KEE

[O. Cr. J. (Edgar Joseph Jr. J.) March 14, 15, 19 to 22 & April 21, 1984]

[Penang – Criminal Trial No. 2 of 1982]

Criminal Law and Procedure – Trafficking in dangerous drugs – Use of agent provocateur – Prima facie case – Evidence of accused – Statements to police after arrest not admissible – No doubts cast on prosecution case – Evaluation of evidence of prosecution witnesses and of accused – Sentence – Dangerous Drugs Act, 1952, s.37, 39 & 40A

Dangerous Drugs – Trafficking – Use of agent provocateur – No doubts cast on prosecution case – Death sentence – Dangerous Drugs Act 1952, ss. 37, 39 & 40A.

Evidence – Trafficking in dangerous drugs – Use of agent provocateur – No doubts cast on prosecution case.

In this case the accused was charged with trafficking in dangerous drugs. The evidence showed that the accused agreed to sell the dangerous drug to a prosecution witness, who acted as *agent provocateur.* A trap was laid and the accused was arrested.

Held: (1) in this case the prosecution had, on the evidence as a whole, both oral and otherwise, established the charge of trafficking in dangerous drugs against the accused beyond all reasonable doubt, even without the aid of the presumptions contained in section 37 of the Dangerous Drugs Act, 1952. With the aid of the presumptions, the case for the prosecution was overwhelming;

(2) there were no extenuating circumstances of any trial to justify the court showing mercy and the accused was sentenced to death.

[*Editorial Note:* The appeal against the above decision in Federal Court Criminal Appeal No. 25 of 1984 was dismissed and the sentence was confirmed.]

Cases referred to:

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49.
(2) *Muniandy & Ors.* v. *Public Prosecutor* [1966] 1 M.L.J. 257.
(3) *Sambu* v. *Rex* [1947] M.L.J. 16.
(4) *Tan Shu En* v. *Public Prosecutor* [1948] M.L.J. 196.
(5) *Tara Singh* v. *Public Prosecutor* [1949] M.L.J. 88.
(6) *Tengku Mahmood* v. *Public Prosecutor* [1974] 1 M.L.J. 110.
(7) *Chang Liang Sang & Ors.* v. *Public Prosecutor* [1982] 2 M.L.J. 231.
(8) *Public Prosecutor* v. *Tan Gong Wai & Anor.* [1985] 1 M.L.J. 355.
(9) *Public Prosecutor* v. *Lim Teik Seng & Ors.* Penang High Court Criminal Trial No. 9 of 1979.

CRIMINAL TRIAL.

Mohamed Bazain bin Idris (Deputy Public Prosecutor for the prosecution.

R. Rajasingam for the accused.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: This accused was prosecuted before me upon a single count of trafficking in dangerous drugs, to wit, 170.3 grammes of heroin, in contravention of s.39B(1)(a) of the *Dangerous Drugs Act, 1952* (Revised 1980) ("the Act"). Specifically, the charge was expressed in the following terms:

"That you, Neoh Wan Kee @ Neoh Guan Kee (m), on October 15, 1981, at about 4.25 p.m. at Jalan Tun Syed Sheh Barakhbah, in the District of Georgetown, in the State of Penang, did on your own behalf traffic in danger-